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Chin Pey Lee & Anor v Teori Warisan Sdn Bhd & Anor

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01(A)-381–06 OF 2018
ABDUL RAHMAN SEBLI, MARY LIM AND HASNAH HASHIM JJCA
9 DECEMBER 2019

C *Administrative Law — Exercise of judicial functions — Administrative Tribunals — House Buyers' Claims Tribunal decided Controller of Housing ('the Controller') had no power under reg 11(3) of the Housing Development (Control and Licensing) Regulations 1989 to waive/modify provisions in contract of sale prescribed under the regulations — Tribunal's decision to hold as null and void* D *Controller's decision to grant housing developer extension of time to deliver vacant possession of housing unit to buyer was illegal, irrational, procedurally improper or ultra vires — High Court erred in quashing Tribunal's decision in judicial review proceedings*

E The appellants, like the other buyers in the related appeals herein before the court, had entered into a sale and purchase agreement ('SPA') to buy an apartment in a project developed by the first respondent ('the developer'). The SPA, which followed the statutory contract of sale prescribed under reg 11(1) of the Housing Development (Control and Licensing) Regulations 1989 ('the F HDR'), required the developer to deliver vacant possession of the completed apartment to the appellants within 36 months of the date of the SPA failing which it had to pay liquidated damages ('LAD') from the date after the expiry of the 36 months until the date vacant possession was given. Without notice to the appellants, the developer applied to the Controller of Housing ('the G Controller') under reg 11(3) of the HDR and obtained an extension of 12 months to the period stated in the SPA for the handing over of vacant possession. Despite the extension of time ('EOT'), the developer only delivered vacant possession of the apartment to the appellants 40 days after the EOT had expired. The appellants filed their claims for LAD against the developer with H the second respondent ('the Tribunal') for the entire period of delayed delivery, ie, from the expiry of the period specified in the SPA. The developer argued that it was only liable for the 40-day delay because the appellants did not challenge the EOT granted by the Controller. The Tribunal decided in the appellants' favour and ordered the LAD to be computed from the date specified I in the SPA. The Tribunal felt itself bound by case law to rule that the EOT was null and void as the Controller had no power to waive or modify the terms of the SPA under reg 11(3) of the HDR. On the developer's judicial review application, the High Court quashed the Tribunal's decision. The High Court held that the Tribunal: (a) had acted in excess of jurisdiction in summarily

disregarding the EOT as its validity was never challenged by the appellants; (b) should have taken into account the developer's legitimate expectation based on the EOT; and (c) was not the proper forum to determine the validity of the EOT as the Controller was never named as a party to the proceedings.

Held, allowing the appeal and all related appeals, setting aside the High Court's decision and restoring the Tribunal's decision:

(1) On the facts and circumstances of the case, the Tribunal's decision was not tainted with illegality, irrationality or procedural impropriety nor was it in excess of the Tribunal's jurisdiction (see para 30).

(2) The High Court was wrong to have considered the developer's legitimate expectation as a relevant factor. The relevant legislations were the Housing Developers (Control and Licensing) Act 1966 and the 1989 Regulations made thereunder. The Act provided for the control and licensing of the business of housing development, the protection of the interests of buyers and matters connected therewith. It conferred on the Tribunal, amongst others, jurisdiction to hear claims for late delivery. The High Court committed a grave error in not appreciating the facts and the law applicable. The judge should have carefully examined the Tribunal's decision not only with regard to process, but also substance, in order to ascertain if the decision was tainted with illegality, irrationality or procedural impropriety (see paras 28–29).

(3) The appellants' right of action against the developer for damages for breach of contract accrued on the date of the breach, which was the day after the expiry of the period stipulated for delivery of vacant possession in cl 25 of the SPA. However, without notifying the appellants of its intention to do so, the developer had applied for and obtained the EOT before the period stipulated in cl 25 had expired (see paras 22 & 25).

[Bahasa Malaysia summary

Perayu-perayu, sepertimana pembeli lain dalam rayuan yang berkaitan dihadapan mahkamah ini, telah memasuki satu perjanjian jual beli ('PJB') untuk memberi satu pangsapuri dalam satu projek yang dimajukan oleh responden pertama ('pemaju'). PJB, yang menuruti kontrak penjualan statutori sepertimana diperuntukkan di bawah perkara 11(1) Peraturan-Peraturan Pemaju Perumahan (Kawalan dan Perlesenan) 1989 ('Peraturan'), yang memerlukan pemaju untuk menyerahkan milikan kosong pangsapuri yang telah dilengkapkan kepada perayu-perayu dalam tempoh 36 bulan dari tarikh PJB yang mana sekiranya gagal pemaju harus membayar ganti rugi jumlah tertentu ('GRJT') daripada tarikh tamat tempoh 36 bulan sehingga tarikh milikan kosong diberikan. Tanpa sebarang notis kepada perayu, pemaju memohon kepada Pengawal Perumahan ('pengawal') di bawah perkara 11(3) Peraturan dan mendapatkan satu tempoh lanjutan 12 bulan dari

A tarikh yang dinyatakan dalam PJB untuk serahan milikan kosong. Walaupun diberikan lanjutan masa ('LM'), pemaju hanya menyerahkan milikan kosong pangsapuri kepada perayu 40 hari selepas LM luput. Perayu-perayu telah memfailkan tuntutan mereka dengan responden kedua ('Tribunal') untuk keseluruhan tempoh serahan lewat, iaitu, dari tarikh luput tempoh yang B dinyatakan dalam PJB. Pemaju menghujahkan bahawa dia hanya bertanggungan untuk penangguhan selamat 40 hari kerana perayu-perayu tidak mencabar LM yang diberikan oleh Pengawal. Tribunal memutuskan bagi pihak perayu-perayu dan mengarahkan agar GRJT dikira dari tarikh yang dinyatakan dalam PJB di bawah perkara 11(3) Peraturan. Sewaktu C permohonan semakan kehakiman pemaju, mahkamah tinggi telah mengetepikan keputusan Tribunal. Mahkamah Tinggi memutuskan bahawa Tribunal telah: (a) bertindak melebihi bidang kuasa dengan terus mengetepikan LM memandangkan kesahannya tidak pernah dicabar oleh perayu-perayu; (b) sepatutnya mengambil kira jangkaan sah pemaju D berdasarkan LM; dan (c) ianya bukan forum yang betul untuk menentukan kesahan LM memandangkan Pengawal tidak pernah dinamakan sebagai pihak dalam prosiding.

E **Diputuskan**, membenarkan rayuan dan semua rayuan berkaitan, mengetepikan keputusan Mahkamah Tinggi dan mengembalikan keputusan Tribunal:

(1) Berdasarkan fakta dan keadaan kes, keputusan Tribunal tidak tercemar dengan ketidaksahan, ketidakrasionalan, atau kesalahan prosedural ianya F juga tidak melampaui bidang kuasa Tribunal (lihat perenggan 30).

(2) Mahkamah Tinggi terkhilaf apabila mengambil kira jangkaan sah pemaju sebagai faktor yang relevan. Perundangan yang berkaitan adalah Akta Pemaju Perumahan (Kawalan dan Perlesenan) 1966 dan Peraturan 1989 yang dibuat kemudiannya. Akta memperuntukkan kawalan dan G perlesenan dalam urusan pemajuan perumahan, penjagaan kepentingan pembeli dan perkara-perkara lain yang berkaitan. Ianya memberikan Tribunal, antara lain, bidang kuasa untuk mendengar tuntutan serahan lewat. Mahkamah Tinggi telah melakukan kekhilafan yang serius apabila H tidak mengamati fakta dan undang-undang terpakai. Hakim sepatutnya meneliti keputusan Tribunal bukan sahaja berkaitan dengan proses, tetapi juga inti patinya, untuk menentukan sama ada keputusan itu dicermarkan dengan ketidaksahan, ketidakrasionalan atau kesalahan prosedural (lihat perenggan 28–29).

I (3) Hak tindakan perayu-perayu terhadap pemaju untuk ganti rugi pelanggaran kontrak bermula pada tarikh pelanggaran, yang merupakan hari selepas tempoh yang ditetapkan untuk serahan milikan kosong luput dalam klausa 25 PJB. Namun, tanpa memaklumkan perayu niatnya untuk melakukan sedemikian, pemaju telah memohon untuk dan

mendapatkan EOT sebelum tempoh yang dinyatakan dalam klausa 25 telah luput (lihat perenggan 22 & 25).]

Cases referred to

Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Ors [2017] MLJU 1366; [2017] 1 LNS 1260, HC (refd)
Council of Civil Service Unions & Ors v Minister for the Civil Service [1984] 3 All ER 935, HL (refd)
Datuk Bandar Kuala Lumpur v Zain Azahari Zainal Abidin [1997] 2 MLJ 17; [1997] 2 CLJ 248, CA (refd)
R Rama Chandran v Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)
Ranjit Kaur a/p Gopal Singh v Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)
View Esteem Sdn Bhd v Vitalmont Development Sdn Bhd (2014)1 LNS 1402, HC
Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal [1995] 2 MLJ 753; [1995] 3 CLJ 344, FC (refd)

Legislation referred to

Housing Development (Control and Licensing) Act 1966 s 16N(2)
Housing Development (Control and Licensing) Regulations 1989 regs 11, 11(1), (3), 12

Appeal from: Civil Suit No JA-25–54–07 of 2017 (High Court, Johor Bahru)

Khutubul Zaman Bukhari (Anis Zaman with him) (Syarizad Zaman & Seah) for the appellant.
Matthew Thomas Philip (Denise Lim Hsui Yen with him) (Thomas Philip) for the respondent.

Hasnah Hashim JCA:

INTRODUCTION

[1] There were twelve appeals with the same facts and issues before us:

(a) Appeal No J-02(A)-367–06 of 2018;

(b) Appeal No J-02(A)-381–06 of 2018;

(c) Appeal No J-02(A)-382–06 of 2018;

(d) Appeal No J-02(A)-383–06 of 2018;

(e) Appeal No J-02(A)-384–06 of 2018;

(f) Appeal No J-02(A)-385–06 of 2018;

(g) Appeal No J-02(A)-386–06 of 2018;

(h) Appeal No J-02(A)-387–06 of 2018;

(i) Appeal No J-02(A)-388–06 of 2018;

(j) Appeal No J-02(A)-389–06 of 2018;

(k) Appeal No J-02(A)-1246–06 of 2018; and

(l) Appeal No J-02(A)-1247–06 of 2018.

[2] The appeals were against the decision of the learned judicial commissioner allowing the first respondent's application for judicial review. The first respondent had applied for an order of certiorari to quash the decision of the Tribunal Tuntutan Pembeli Rumah ('the Tribunal') made in favour of the appellants on 19 June 2017 ('the award'). The Tribunal had allowed the appellants' claim for liquidated damages for late delivery of vacant possession ('LAD'). The appellant, dissatisfied with the decision of the learned judicial commissioner appealed to this court.

[3] We heard the appeals on 14 March 2019. After due deliberation and having carefully considered the submissions of both parties we found that there are merits in the appeals and allowed the appeals with costs. We proposed to give reasons for our decisions with respect to all the appeals in one common judgment. Since the facts are similar in all the appeals, for purposes of this judgment, we will only be referring to the facts in this appeal which parties had agreed to refer in their submissions. These are our reasons.

MATERIAL FACTS

[4] The first respondent is a housing developer for a project known as 'The Seasons Apartment @ Amara Larkin'. The appellants entered into a sale and purchase agreement dated 20 April 2012 ('the SPA') with the respondent to purchase an apartment unit described as B-03–02 type B, The Seasons Apartment @ Amara Larkin, Jalan Larkin 80300 Johor Bahru ('the apartment'). Under the SPA the agreed completion period was three years and it was expressly provided under cl 25 of the SPA that the handing over of vacant possession of the apartment shall be delivered within 36 months from the date of the SPA, which is on or before 19 April 2015.

[5] During the interim, on 15 January 2016, the first respondent applied to the Controller of Housing pursuant to reg 11 of the Housing Development (Control and Licensing) Regulations 1989 ('the HDR') to amend the

prescribed SPA to extend the period of delivery of vacant possession. The application to amend the SPA by extending the date of delivery of vacant possession was done by the first respondent without notifying the appellants. The Controller of housing approved the application and extended the period of delivery of vacant possession from 36 months to 48 months. The delivery of vacant possession was then extended to 20 April 2016. The extended period was conditional upon the first respondent notifying the appellants as purchasers of the apartment. However, the appellants were only notified on 22 January 2016. Despite the extension of time granted, the first respondent failed to complete the development and only delivered vacant possession of the apartment on 25 September 2016 together with the common facilities.

[6] Aggrieved by the delay in delivering vacant possession, the appellants filed their claims at the Tribunal for the entire period of delay. It is the appellants' case that the first respondent is liable for the liquidated ascertained damages ('LAD') from the date specified under the SPA, that is, 19 April 2015. The first respondent, however, contended that it was only liable for LAD for a delay of 40 days, calculated from 20 April 2016 ('the extended completion date') to 29 May 2016. The first respondent was ordered to pay RM3,763.17 as LAD for the delay of 40 days, that is, from 19 April–29 May 2016 ('the extended period of delivery') to the appellants on 31 May 2016. The first respondent had argued that the appellants did not appeal against the extended period pursuant to reg 12 of the HDR.

[7] The Tribunal found in favour of the appellants and awarded LAD for handing over vacant possession and completion of common facilities calculated from the date as specified in the SPA up to the date of Certificate of Completion and Compliance ('CCC'). The Tribunal awarded the sum of RM45,835.38 to the appellants.

[8] The first respondent sought the following orders from the High Court:

(a) an order of certiorari to quash the decision of the Tribunal dated 19 June 2017;

(b) costs; and

(c) any other consequential orders.

[9] Briefly, the grounds of the first respondent in support of the judicial review are as follows:

(a) the Tribunal failed to take into consideration the extended date of delivery;

(b) the Tribunal failed to take into consideration the fact that the appellants did not appeal or apply for judicial review of the extended date granted by the Controller of Housing;

(c) the Tribunal failed to consider the date of completion of the common facilities and that the interpretation of cl 27 SPA and the calculation of the LAD were not correct; and

(d) the Tribunal was wrong in respect of the forum for the claim by the appellants as the appellants did not appeal or apply for judicial review.

[10] In response, the appellants in their affidavit in reply stated that under the SPA vacant possession must be delivered on 19 April 2015. There is no provision for extension of time for delivery of vacant possession and therefore, any extended time of delivery is not valid. The EOT which was granted by the Controller of Housing is in clear violation of the SPA as well as reg 11(3) of the HDR. By granting the application to amend the terms of the SPA on EOT the Controller of Housing had acted in excess of the jurisdiction conferred under the Act and the HDR.

THE TRIBUNAL

[11] After considering the submissions of the parties as well as the facts and evidence before him, the Tribunal decided that the first respondent was liable to pay the appellants the LAD in the sum of RM45,835.38 calculated from 19 April 2015 to the date of issuance of vacant possession notice and the certificate of completion, which is, 29 May 2016. With regards to the issue of the LAD claim and the common facilities, the first respondent contended that the common facilities were completed before the vacant possession of the appellants' units. The Tribunal found that there was insufficient evidence to support the respondent's claim that the common facilities was completed and certified by the architect. Hence, the respondent's appeal was dismissed. The Tribunal relied on the case of *View Esteem Sdn Bhd v Vitalmont Development Sdn Bhd* [2014]1 LNS 1402 where there was a failure to adduce evidence that the common facilities have been completed and duly certified and as such the developer's appeal was dismissed (see pp 295–335 of the record of appeal).

[12] The Tribunal applied the High Court case of *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Ors* [2017] MLJU 1366; [2017] 1 LNS 1260 (Permohonan Bagi Semakan Kehakiman No WA-25–124–07 Tahun 2016) and concluded that the EOT granted was null and void as the Controller of Housing has no power to waive or modify the contract of sale under reg 11(3) of the HDR.

THE HIGH COURT

[13] The learned judicial commissioner allowed the application for judicial review and granted an order of certiorari to quash the decision of the Tribunal and in essence allowed the amendment to the SPA extending the EOT.

[14] The learned judicial commissioner was of the considered view that the Tribunal had acted in excess of jurisdiction as it was not entitled to disregard the EOT summarily. The first respondent had a legitimate expectation based on the EOT of which, the validity was never challenged by the appellants. The learned judicial commissioner was of the view that the Tribunal's decision to dismiss the claim based on stare decisis failed to take into account the first respondent's legitimate expectation. The Tribunal was not the proper forum to deliberate on the validity of the EOT as the entity who had granted the EOT was not named as a party in the suit.

OUR DECISION

[15] Before us, learned counsel for the appellant submitted that the award made by the president of the Tribunal was correct and that the learned judicial commissioner had erred in quashing the said award. It was submitted that in the light of the facts and the circumstances of the case put forth before the Tribunal, the decision arrived at was not tainted with illegality and irrationality as the Tribunal had taken into account relevant considerations, material facts and had taken into consideration the totality of the evidence before him.

[16] The Federal Court case of *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 and the case of *Ranjit Kaur a/p Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629 correctly held that the decision of the inferior Tribunal may be reviewed on the grounds of illegality, irrationality and possibly proportionality and the courts are permitted to scrutinise such decisions not only for process but also for substance.

[17] However, the court should not reverse an award of a Tribunal unless there is proven a clear jurisdictional error. When a Tribunal does not act within the proper scope of its statutory function such as whether it has acted without sufficient evidence or on no evidence, or has misconstrued the law on an issue on which its decision is founded, then it can be said that there is jurisdictional error (see *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748).

[18] In *Datuk Bandar Kuala Lumpur v Zain Azahari Zainal Abidin* [1997] 2 MLJ 17; [1997] 2 CLJ 248 at p 269 Gopal Sri Ram JCA (as he then was) said:

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> ... where the exercise of a decision is challenged on grounds of vires that is illegality, or unreasonableness, the court is not confined merely to the decision-making process, but may examine the merits of the decision itself.

B

[19] We are further guided by the Federal Court case of *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal* [1995] 2 MLJ 753 at p 757; [1995] 3 CLJ 344 at p 348:

C

> In exercising judicial review, the High Court was obliged not to interfere with the findings of the Industrial Court unless they were found to be unreasonable, in the sense that no reasonable man or body of men could reasonably come to the conclusion that it did, or that the decisions of the Industrial Court looked at objectively, are so devoid of any plausible justification that no reasonable person or body of persons could have reached them (see Lord Denning's judgment in *Griffiths (Inspector of Taxes) v JP Harrison (Watford) Ltd* [1962] 1 All ER 909 at p 916, and judgment of Lord Diplock in *Bromley London Borough Council v Greater London Council and Anor* [1983] 1 AC 768 at p 821).

D

[20] To quash a decision made by a public authority in excess or abuse of jurisdiction or contrary to the rules of natural justice or where there is an error of law on the face of the decision of the public authority the court must review the decision in order to determine the basis of the alleged material mistake of fact on the part of the decision maker or where the decision was arrived at arbitrarily, capriciously or mala fide or as a result of unwarranted adherence to a principle or in order to further an ulterior or improper process, or misconceived the nature of the discretion conferred and took into consideration irrelevant issues or had blatantly ignored relevant ones.

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[21] In the instant appeal the functions, powers and jurisdiction of the Tribunal are expressly provided spelt out in the Act. Section 16N(2) of the Act provides for the limitation to the jurisdiction of the Tribunal as follows:

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> ... (2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is brought by a homebuyer not later than twelve months from:
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> (a) the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later;
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> (b) the expiry date of the defects liability period as set out in the sale and purchase agreement; or
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> (c) the date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the certificate

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of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later.

[22] It was common ground that the unit was not completed and available for delivery as provided under agreement. Under the SPA the apartment units must be delivered by the first respondent to the appellants within 36 months form the date of the SPA which is on or before 19 April 2015. Unbeknownst to the appellants, the first respondent had applied to amend the terms of the SPA by extending the period of delivery. The appellants' right of action for damages for breach of contract, accrued on the date of the breach, which in this case was the day after the stipulated period provided under cl 25 of the SPA when the first respondent failed to deliver vacant possession. Clause 25 of the SPA reads:

25 Time for delivery of vacant possession

(1) Vacant possession of the said building shall be delivered to the purchaser in the manner stipulated in cl 26 herein within 36 calendar months from the date of this agreement.

(2) If the vendor fails to deliver vacant possession of the said building in manner stipulated in cl 26 herein within the time stipulated in sub-cl (1), the vendor shall be liable to pay to the purchaser liquidated damages calculated from day to day at the rate of 10%pa of the purchase price from the expiry date of the delivery of the vacant possession in sub-cl (1) until the date the purchaser takes vacant possession of the said parcel. Such liquidated damages shall be paid by the vendor to the purchaser immediately upon the date the purchaser takes vacant possession of the said parcel.

(3) For the avoidance of doubt, any cause of action to claim liquidated damages by the purchaser under this clause shall accrue on the date the purchaser takes vacant possession of the said parcel.

[23] The SPA is prescribed under reg 11(1) of the HDR 1989 and reads:

11 Contract of sale

(1) Every contract of sale for the sale and purchase of a housing accommodation together with the sub divisional portion of land appurtenant thereto shall be in the form prescribed in sch G; ...

[24] It is also expressly provided under reg 11(3) of the HDR that if the Controller is satisfied that due to special circumstances or hardship or necessity the compliance with the terms of the SPA is impracticable or unnecessary, he may modify or waive such provision. However, the proviso to the said regulation stipulates that such a waiver or modification shall only be approved if the said application is made after the expiry of the period stipulated for the handing over of vacant possession under the SPA or after the validity of any extension granted:

> Where the Controller is satisfied that owing to special circumstances or hardship or necessity compliance with any of the provisions in the contract of sale is impracticable or unnecessary, he may, by a certificate in writing, waive or modify such provisions:
>
> Provided that no such waiver or modification shall be approved if such application is made after the expiry of the time stipulated for the handing over of vacant possession under the contract of sale or after the validity of any extension of time, if any, granted by the Controller.

[25] This was not the case in the appeal before us. The application for amendment was applied for and approved before the expiry of the stipulated period in the SPA. The appellants as purchasers were not notified or informed of the first respondent's intention to make such an application.

[26] In his grounds of judgment the learned judicial commissioner said that approach taken by the Tribunal left the first respondent defenceless, unable to respond or answer on the validity of the EOT as the Controller was not named as a party to the suit:

> 25 This approach taken by the Tribunal would have left the appellant pretty much defenseless to answer on the validity of a document, namely the EOT, which had not been issued by it, which is assuming (which does not seem the case here) that the appellant had even been given the opportunity to do so. The party which had issued the EOT was not party to the proceedings before the Tribunal, leaving only the applicant there to defend the validity of a document which it had applied for, obtained and thought it to be worth more than the paper that it was printed on.

[27] The learned judicial commissioner distinguished this case before him and that of *Ang Ming*'s case. He was of the view that the facts and issues therein are different as the parties involved in the issuance of the EOT were parties to the case:

> 27 Quite aside from the sense of helplessness that the appellant may have found itself with regard to the Tribunal's dealing with the EOT where it was ruled to be ineffective, the appellant would not be in any position to argue or put forth the validity of the said official document although the appellant rightly had an interest in the purport to the said document.
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> 28 Under those circumstances, legitimate expectation ought to have been a relevant factor to consider, whether the appellant would be entitled to rely on the EOT as being good and valid for what it had purported to confer on the appellant.

[28] With respect, we do not agree with the reasoning of the learned judicial commissioner that legitimate expectation ought to have been a relevant factor to consider. The relevant legislations in this appeal are the Housing Developers (Control and Licensing) Act 1966 and the HDR. The Act provides for the

control and licensing of the business of housing development, the protection of the interest of purchasers and for matters connected therewith. It confers the Tribunal, amongst others, the jurisdiction to hear claims for late delivery.

[29] In our view, the learned judicial commissioner had committed a grave error when he did not appreciate the facts and the law applicable before him. As a judge, in exercising judicial powers, the judicial commissioner must carefully examine the decision of the Tribunal not only in relation to the process, but also for substance in order to ascertain if such decision was tainted with illegality, irrationality or procedural impropriety within the principles amongst others outlined in the case of *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1984] 3 All ER 935; *R Rama Chandran v Industrial Court of Malaysia & Anor* and *Ranjit Kaur a/p Gopal Singh v Hotel Excelsior (M) Sdn Bhd*.

[30] We agreed with the submissions of the appellants' learned counsel that the decision of the Tribunal was rational and not acted in excess of its jurisdiction. In the light of the facts and the factual matrix of the circumstances, we are satisfied that the decision of the president of the Tribunal was not tainted with illegality, irrationality or procedural impropriety.

[31] For the reasons given, we were of the unanimous view that the appeal be allowed. The order of the High Court was set aside. The decision of the Tribunal was restored. For this appeal and appeal Nos 382–389 we awarded costs of RM30,000 subject to allocatur fees. For appeal No 367 we awarded costs of RM10,000 subject to allocator fees. For appeals 1246 and 1247 costs of RM10,0000 for both appeals subject to allocator fees.

Appeal allowed and all related appeals, High Court's decision set aside and Tribunal's decision restored.

Reported by Ashok Kumar